IN SENATE OF THE UNITED STATES,

MARCH 1, 1827.

The Committee to whom was referred the several messages of the President of the United States, of the 5th and 8th February, and a report and certain resolutions of the Legislature of Georgia, ask leave to make the following

REPORT:

The Committee have entered on the examination of the subject referred to them, with a deep sense of the magnitude of the questions which it involves, with a strong desire to preserve the respective rights of the United States, and of Georgia, so far as these may be affected by the action of the Legislative Department, and with a still more anxious solicitude to arrive, if practicable, at a result which, without violating the obligations, or committing the rights, of the Confederacy, or those of one of its members, might preserve, undisturbed, the peace and harmony of the Union.

They have believed that a view of this subject, so far as it is necessary to the purposes of this inquiry, may be presented to the Senate by a brief statement of facts, with reference,

First. To the grounds on which the Executive Government of the United States has interfered, and proposes further to interfere, with the proceedings of Georgia; and,

Secondly. To the claims of that State, and the principles on which she relies to support them.

1. Under an act of the Legislature of Georgia, passed in June, 1825, and the supplementary, and amendatory acts of the same Legislature of December, 1825, and 1826, surveys were directed of that portion of the territory of Georgia, the Indian title to which had been extinguished by the treaty of the Indian Springs, of February, 1825. By the terms of that compact, these lands were not to be surrendered by the Indians, until September, 1826; but the Government of Georgia was desirous of effecting its surveys, before the arrival of the period of surrender, under such arrangements with the Indians themselves, as would render the act acceptable to them. The measures which were adopted to effect this arrangement, the fact that one of the chiefs who had assented to it, was put to death, and the subsequent division of the tribe into hostile parties, both of whom sought the protection of the United States, are within the recollection of the Se-

nate. At this period, the Executive Government of the Union, interposed, and having made such inquiry, as it deemed proper, forbid the further prosecution of the surveys by Georgia. The Executive of that State, protesting against the measure, nevertheless submitted to the inhibition; and this state of things continued until the last session of Congress, when a new treaty was negotiated at this place, with certain Chiefs and Warriors acting under the authority of a council of the tribe. This compact stipulated the surrender of certain lands, within limits which it defined, and the abrogation of the treaty of the Indian Springs. It was resisted by Georgia as a violation of her rights, and her representatives in Congress recorded their protest against the measure. It nevertheless received the Constitutional sanctions, and, so far as depended on the United States, has been carried into effect, by the payment of the stipulated price. In the result, it was found not to include all the lands occupied by the Creeks within the limits of Georgia, and the attempt to survey those which were excluded, was resisted, and the surveyors of the State of Georgia, have been stopped by an order of certain Chiefs of the tribe, who have appealed to this Government for protection.

The President of the United States, conceiving the survey by Georgia to be in violation of the laws of the Union, and applauding the forbearance of the Indians, as calculated to avert scenes of violence and blood, which he apprehends would otherwise result from these proceedings, has assured them of his protection, and has directed the arrest and prosecution of the officers of Georgia engaged in the survey. These prosecutions, and the measures which may be adopted to carry them into effect, are stated to be founded on the 5th, 16th, and 17th sections of an act of Congress, passed on the 30th March, 1802, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. Expressing his conviction that it was within the competency of the Executive to have resorted at once to military force, or to civil process, for the arrest of the officers of Georgia, the President proceeds to state the reasons which have influenced him to have recourse, in the first instance, only to the latter; but he adds the declaration, that the act of the Legislature of Georgia, under the construction given to it by the Governor of that State, and the surveys made, or attempted to be made under it, beyond the boundary line secured by the treaty of Washington, are in direct violation of the supreme law of this land; and, if persevered in, and the laws of the Union remain unaltered, it is declared that "*a superadded obligation, even higher than that of human authority, will compel the Executive of the United States to enforce the laws, and fulfil the duties of the Nation, by all the force for that purpose committed to his charge.*" It is added, "that the arm of military force will be resorted to, only in the event of the failure of all other expedients provided by the laws, of which, (it is said) a pledge has been given by the forbearance to employ it at this time" Finally, the President submits it "to the wisdom of Congress to determine whether any further act of legislation

may be necessary or expedient, to meet the emergency which these transactions may produce."

Such are the circumstances under which this subject is presented by the President to the consideration of the Senate.

On the other hand, Georgia claims the right to exercise jurisdiction within the whole extent of her chartered limits, except only over that part of her original territory, which, by the compact of 1802, she ceded to the United States.

She claims the right to survey such lands within her limits, as may be within the temporary occupancy of an Indian tribe, or to inhibit their survey; and the right, also, to extinguish the Indian title at her own cost, if she shall think fit to do so. She questions the constitutional validity of the act of 1802, if construed to extend to the exercise of this power by a State, in relation to those lands of which she has the ultimate fee; but if its validity be established, her rights, even under the provisions of that act, she affirms will still remain.

Such are the claims which she urges, independently of treaty stipulations between the United States and the Creek Indians.

Under the treaty of the Indian Springs, and by virtue of the contract of 1802, she contends that she has acquired an absolute relinquishment of the Creek title of occupancy, to all the lands within her limits; that she has vested rights under that treaty of which she cannot be divested by any act of the Government of the United States, or of any part, or the whole of the Creek tribe.

She founds her claim to exercise jurisdiction within the whole of her chartered limits, on the declaration of Independence, the parties to which became, *ipso facto*, severally, sovereign and independent States, owing no allegiance to each other, nor to any common head.

On the result of the struggle which that declaration produced, and which eventuated in the recognition of the States, as *severally* sovereign and independent; and on the fact that this right, inseparably incident to sovereignty, has never been yielded to the United States.

The exceptions to the principle, that her jurisdiction is co-extensive with her limits, she contends, exist only in those cases, where, in conformity to the Constitution, the United States, have by her consent, acquired exclusive jurisdiction over particular places; that in other cases provided for by the Constitution, the jurisdiction of the United States, within the limits of a particular State, is concurrent with, but not exclusive of, the jurisdiction of the particular State, unless the Constitution, in terms, or from the necessity of the thing, inhibits the action of the State over the subject.

As an evidence of her right, thus to exercise a jurisdiction co-extensive with her limits, she appeals to the whole history of her legislation, in proof of its continued, uninterrupted, and hitherto unquestioned, exercise; to her laws and resolutions of 1783, 1785, 1787, 1814, 1818, and 1819, on the subject of surveys of land, in the occupancy of Indian tribes, and to other acts of 1785 and 1788, relatively to the county of Bourbon, established by her authority on the bank of the Mississippi, and to the subsequent recognition by the Unite

States, in the contract of 1802, of the rights acquired under the former act.

She appeals to the history of the legislation of her sister States, having Indians residing within her limits, on lands, the ultimate fee of which is in the particular State, all of whom, she alleges, have exercised the same jurisdiction, which is now claimed, and has always been exercised, by Georgia, and to the principle of the decisions of the Supreme Court, especially in reference to the grants of North Carolina, and she refers particularly to the legislation of that State, of South Carolina, of Virginia, and New York.

In further proof of her right to survey lands in the occupancy of an Indian tribe, but within her chartered limits, she appeals to the decision of the same Court in the case of *Fletcher* and *Peck*, in which it was decided that the Indian title to lands within the limits of Georgia was not inconsistent with the title in fee of the State, to the lands so occupied by the Indians; that the State of Georgia had power to grant those lands during such occupancy, and that her grantee might maintain an ejectment for them, notwithstanding that title; and she inquires, if the right of *survey* be not inseparably incident to the exercise of those rights, the existence of which is thus determined by the Supreme Court.

The claim of Georgia, under the treaty of the Indian Springs, may be briefly stated thus:

The compact of 1802, she contends, bound the United States, in consideration of the cession made by Georgia, to extinguish the Indian title to the remaining lands within her limits, and in their occupancy. It created an obligation, but did not confer a right on the United States. It was simply, she urges, a stipulation that the expense of the extinguishment should be paid by the United States, and left them consequently to settle the amount. When, through their agents, the contract of the Indian Springs was negotiated, and the Government had ratified the bargain, the right of Georgia became, as she contends, irrevocably vested. The authority of the United States was then at an end. This Government was functus officio as to the subject; the power was executed. If the agents of this Government had committed a fraud, the United States was bound to indemnify those whom they had injured. If the Indians were dissatisfied, it was the duty of this Government to appease them by the use of its own means. It could not interfere with the rights of Georgia. The United States, it is said, had conferred no right on Georgia. They had merely removed an incumbrance from a pre-existing right; as by the compact of 1802, they were bound to do. They could not replace that incumbrance by a new compact with the Indians. The Government of the United States, it is asserted, did not pretend to do so; on the contrary, those who maintained the validity of the treaty at Washington professed to believe, the opinion was distinctly avowed on the floor of the Senate, that so far as Georgia was concerned, that treaty was co-extensive with the one negotiated at the Indian Springs. That, if on this expectation the United States were deceived, they

must look to the Indians for the correction of the error; that they have, in this event, paid money for a consideration which they have not received; but that the rights of Georgia remain untouched. Once vested, and no one, she affirms, will deny that they were so, while the treaty of the Indian Springs was in force, they cannot be divested without her consent.

She denies the application of the Indian intercourse act to the subject, affirming that it is directed against the unauthorized intrusion of private individuals, and not to acts done under the authority of a State. She asserts that this is obvious, from its terms, and from the fact that the passport of the Governor of a State, equally with that of the President, dispenses with some of its penalties. That it is directed against intrusive settlements, or acts done with a view to settlement; not to surveys made under the authority of law. Against such surveys and settlements, she affirms that the Indians are protected by the constitution and laws of Georgia.

Such, the committee are induced to believe, is the claim which Georgia will present to the proper tribunal.

The committee having considered it their duty to apply, through their chairman, to the proper department of the Government to ascertain whether any particular act of legislation was contemplated, or desired by the Executive Government, have been referred, generally, to the message of the President; and, in answer to a specific inquiry, whether any appropriation of money, by Congress, was necessary to obtain the relinquishment, by the Indians, of any claim to the lands in controversy, have been informed that the expense of treating for that object, might be defrayed out of the contingent fund, and the purchase money, if a treaty should be made, provided for by an appropriation at the next session of Congress; and they have been furnished, by the head of that department, with a copy of his instructions to the Agent of the United States, residing in the Creek Nation, directing him to use his exertions to obtain such relinquishment; which is herewith submitted.

The committee are in possession of no evidence to shew that the State of Georgia has, at any time, manifested a determination to resist the civil authority of the United States. On the contrary, it appears that she has, heretofore, submitted to the order of the President to desist from the survey, and the resolutions of her legislature, at its recent session, also referred to this committee, contain a direct and earnest appeal to Congress to settle this unhappy controversy.

On the various and important questions which that controversy presents, the Committee have not deemed it necessary, or proper, to express an opinion. The President has referred them to the decision of the Judicial department, and there is nothing before the Committee to authorize the belief that Georgia will not peaceably acquiesce in that reference. They do not, therefore, think it necessary to recommend any act of legislation, by Congress, in anticipation of a conflict between the authorities of the Union, and of Georgia; and unless, as an act of indispensable and melancholy necessity, they would deem such legislation improper.

The belief that we have arrived at a crisis, when one of the members of this confederacy, placing herself in an attitude of hostility to the residue, has rendered it necessary to resort to the military power of the General Government, to coerce her to submission, would be appalling to every friend to the union and happiness of these States; and, though infinitely less in degree, it would be matter of unaffected regret, to have forced upon us the conviction, that an unwarranted anticipation of such a crisis, had led to the unnecessary suggestion of even a conditional determination to have recourse to so afflictive a measure.

It is believed to be among those axioms, which, in a Government like ours, no man may be permitted to dispute, that the only security for the permanent union of these States, is to be found in the principle of common affection, resting on the basis of common interest. The sanctions of the Constitution would be impotent to retain, in concerted and harmonious action, twenty-four sovereignties, hostile in their feelings towards each other, and acting under the impulse of a real, or imagined diversity of interest. The resort to force would be alike vain and nugatory. Its frequent use would subject it, with demonstrative certainty, to ultimate failure, while its temporary success would be valueless for all the purposes of social happiness. In such contests, however unequal, and however transient, the seeds of disunion would be thickly sown, and those who may be destined to witness them, will, speedily thereafter, be called to lament the destruction of the fairest prospect of civil liberty, which Heaven, in its mercy, has vouchsafed to man.

The Committee have before said, that they see no reason to fear that Georgia will not acquiesce in the decision of this question by the Judicial Department. It has been seen that she has heretofore yielded to the mere order of the President, and the resolutions referred to the committee evince that she still looks with unabated confidence to the Congress of the United States. They can, therefore, discover no ground for the assumption that she meditates resistance to the civil authority of the Union. The indications which have been given of an intention to employ a portion of her militia, if necessary, for the protection of her surveyors against Indian violence, were limited to that object. That they were intended to oppose the constitutional authority of the Government, is unsupported by any facts which have been disclosed to the Committee, and appears to them unworthy of belief: Their confidence in this conviction has been to them a source of unmingled satisfaction. For, although they would readily apply, if necessary, the whole energies of the Government to the support of its legitimate authority, they would, at the same time, regard the most remote preparation for a resort to military force, for the purpose of compelling a sister State to submission, as among the greatest of public calamities.

The committee will not enlarge upon the frightful consequences of civil wars. They are known to be calamitous to *single* Governments, and fatal to *confederacies*. Reason tells us this, and history, with her

warning voice, confirms it. A contagious fury rages in such contests. No matter how small the beginning, or how insignificant the cause, the dissension spreads, until the whole confederacy is involved. The "*Third Sacred War*," which ended in the ruin of all Greece, began in a trifle, in the attempt of the Amphyctions to punish the smallest member of the confederacy for violating some ground which had been consecrated to the god Apollo. The committee will not multiply examples of the same fatal character, of which history is full. They will say, that the "*ultima ratio regum*," which cannot be resorted to between two Foreign Powers, until all the arguments of reason have been tried and exhausted, ought not to be hastily used in a community of States bound together by a confederated Government. The *last* argument of kings, should not be the *first* among associated Republics. The tribunal of public opinion should be resorted to. In a free Government it is almost as omnipotent over communities as over individuals. None can despise it. Coupled with a judicial decision, the empire of public opinion will be as binding as the decision of arms. In this case, the laws have been already appealed to, and the committee most earnestly recommend a reliance upon their efficacy, and upon that instinctive sagacity of public opinion, which rarely fails to discover and to sustain the just side of every great question.

It has hitherto been the happiness and boast of the American People, that, since the adoption of the present Constitution, their annals exhibit but a single instance in which, to maintain the authority of their Government, the blood of the citizen has been shed by the arms of the soldiery. It should be the prayer of every American that this may be the last. The apprehensions then felt for the continuance of our Confederacy are fresh in the recollection of the Committee. Nor can they forget the exultation which was manifested by the enemies of Republican Governments, and their confident predictions of the speedy downfal of ours. The virtue and intelligence of the People, co-operating with the inherent excellence of our political institutions, averted the danger, and preserved the Union. Three entire administrations have since intervened, without resorting either to the actual or threatened exercise of force, to sustain the authority of law. During a portion of this period, our country was involved in a sanguinary war with one of the most powerful nations of Europe. In its progress, when unlooked for calamity filled the timorous with apprehension, and roused the patriot to redoubled exertion, a spirit of insubordination was manifested in an important portion of the Union. A crisis occurred more interesting than any other in the history of our Confederacy, and there appeared reason to apprehend that the horrors of a civil, might be superadded to the calamities of a foreign war. If evidence were wanting to show the profound and intimate knowledge of the nature and tendency of our political system, possessed by the statesmen who then presided over the Republic, it was at that time strikingly exhibited; and if any thing could add to the debt of gratitude which the country owes to this illustrious patriot, it is his con-

duct on that occasion. Had threats of military coercion been used, the probability of its application would have been increased, and, under the excitement which prevailed, the commencement of hostilities between the Federal and State authorities might have terminated our existence as a free and united People. No menace was employed. No threat of military coercion fulminated. The movements of those to whom disaffection was attributed, were observed with care, and silent preparations were made to enable the Government to act with effect, should the application of force become unavoidable. The threatened collision between the Federal and State authorities was fortunately avoided. The conduct of the parties was submitted to the judgment of the American People. The sentence which they pronounced was just, and it will remain irrevocable. Public opinion performed its office, and our Republican institutions arose from the shock with renewed lustre and increased stability. The honest apprehensions of those who had before doubted their capacity to sustain the pressure of danger and the conflict of war, were dispelled, and all the hopes which were founded on the anticipated dissolution of our Confederacy were destroyed.

Such were the legitimate fruits of the wisdom, moderation, and firmness, which were then displayed; and, while they retrace the history of that period, the committee are encouraged to hope that similar wisdom and moderation will lead to similar results. They would be unwilling to give their sanction to different measures, on any occasion of apprehended collision between the Federal Government and one of its members, but more especially in a case so essentially different, in principle and character, from that with which it has been compared, as the present is admitted to be. It is far from their desire to interfere with those duties which have been confided to the Executive, and which, they doubt, not will be discharged with ability and zeal; but it becomes their duty to express the opinion that there appears to be no ground to apprehend the necessity of appealing to military force, for the purpose of enforcing the laws within the State of Georgia, and that they cannot concur in the propriety of menacing its application, or of adopting any measure in anticipation of an issue which they do not apprehend, and which every good citizen should endeavor to avert.

The committee have not deemed it necessary to advert to various other subjects embraced in the report and resolutions referred to them. Some of them involve questions which cannot, properly, originate in this branch of the national legislature; and they do not perceive the necessity or propriety of entering into an examination of the remainder, while the principal question which belongs to this controversy is in a course of judicial inquiry.

The Committee rely, with confidence, on the justice, and the patriotism of the authorities of the United States, and of Georgia, in expressing their convictions, that no such unhappy consequences as are apprehended, can result from the present controversy. They rely on the instructions and efforts of the War Department, and on the decla-

rations made to the Senate, during the discussion of the treaty at Washington, by one of its members, who had been actively engaged in negotiating th at treaty, (of the repeatedly expressed willingness of the Creek Chiefs to relinquish any little remnant of land within the limits of Georgia, which, on running the lines of that treaty, might be found to be excluded,) for the assurance, that this whole controversy may be speedily adjusted, by obtaining the desired relinquishment.

They therefore recommend the adoption of the following resolution:

Resolved, That the President of the United States be, respectfully, requested to continue his exertions to obtain from the Creek Indians a relinquishment of any claim to lands within the limits of Georgia.